

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

WILLIAM S. KINDLER,

Plaintiff,

V.

JOHN E. POTTER, in his official capacity
as Postmaster General of the United
States Post Office,

Defendant.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
84

CASE NO. 1:04-cv-0934-DFH-TAB

ORDER ON PENDING MATTERS

The disagreement between plaintiff Kindler and his attorney, combined with Mr. Kindler's habit of filing documents himself while he was still represented by counsel, has now produced a procedural muddle. The court will resolve that muddle as follows.

First, the court grants attorney Stowers' motion to withdraw. It is apparent that the relationship between Mr. Stowers and Mr. Kindler has broken down. The court notes Mr. Kindler's letter filed November 7, 2005 stating that Mr. Stowers had informed him he would not be responding to the defendant's motion for summary judgment because of a lack of evidence.

Second, Mr. Kindler's "Motion for Summary Judgment for the Plaintiff" filed on November 7, 2005 is hereby denied. The motion does not comply with this court's Local Rule 56.1 in numerous respects, and it was filed long after the deadline for such motions. To the extent Mr. Kindler seems to believe summary judgment should be a sanction for a failure to make a discovery response, he has not begun to lay the foundation for such a motion. Also, the court notes that Mr. Stowers had raised an issue with Mr. Kindler as to whether he and the other employee in question had worked for the same supervisor. See attachments to Docket No. 57.

Third, defendant's motion for summary judgment has been on file since May 31, 2005. After extensions of time to respond, plaintiff submitted a response himself on September 30, 2005. Because plaintiff was then represented by counsel, the court's entry of October 4, 2005 stated that the filing would be disregarded. On October 4, 2005, the court ordered plaintiff to respond by counsel no later than October 12, 2005. The one way to avoid complying with that deadline was withdrawal of counsel. Accordingly, out of an abundance of caution, the court will grant plaintiff one final opportunity to respond to the defendant's motion for summary judgment. He shall do so **no later than November 28, 2005.**

Because plaintiff is now acting without counsel, he is entitled to certain information about the summary judgment procedure. Plaintiff is hereby notified

that a fact stated in the defendant's Statement of Material Facts and supported by admissible evidence will be accepted by the court as true for purposes of summary judgment unless the plaintiff cites and submits to the court specific and admissible evidence that contradicts that statement of material fact. Also, in compliance with this court's Local Rule 56.1(h), the full texts of Rule 56 of the Federal Rules of Civil Procedure and this court's Local Rule 56.1 are attached to this entry. Plaintiff is advised to read them carefully to ensure that any response to defendant's motion complies with those rules and other applicable law, such as the Federal Rules of Evidence. If he wishes to do so, plaintiff may submit with his opposition some or all of the materials he submitted on September 30, 2005, but the materials would need to be submitted in admissible form, with a brief that specifically identifies any disputed issues of fact and the evidence relied upon to create those disputed issues of fact.

Finally, the court notifies Mr. Kindler that he has an obligation to keep the court informed of a current address where he can receive mail, and that he has an obligation to send a copy to defense counsel of any document he files with the court, and that any document he files with the court must include a certificate that he has in fact complied with this obligation and how he has done so, as required by Rule 5 of the Federal Rules of Civil Procedure.

So ordered.

Date: November 8, 2005



DAVID F. HAMILTON, JUDGE

United States District Court
Southern District of Indiana

Copies to:

Gregory A. Stowers
STOWERS WEDDLE & HENN PC
gstowers@swh-law.com

Debra G. Richards
UNITED STATES ATTORNEY'S OFFICE
debra.richards@usdoj.gov

William S. Kindler
CRC 1933 Pleasonton Road
Fort Bliss, TX 79916

FEDERAL RULE OF CIVIL PROCEDURE 56

Rule 56. Summary Judgment

(a) For Claimant.

A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party.

A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Motion and Proceedings Thereon.

The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion.

If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When Affidavits are Unavailable.

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith.

Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

LOCAL RULE 56.1

Local Rule 56.1 - Summary Judgment Procedure

(a) Requirements for Moving Party. A party filing a motion for summary judgment pursuant to Fed. R. Civ. P. 56 shall serve and file a supporting brief and any evidence not already in the record upon which the party relies. The brief must include a section labeled “Statement of Material Facts Not in Dispute” containing the facts potentially determinative of the motion as to which the moving party contends there is no genuine issue. These asserted material facts shall be supported by appropriate citations to discovery responses, depositions, affidavits, and other admissible evidence either already in the record or contained in an appendix to the brief. Such citation shall be by page or paragraph number or similar specific reference, if possible; this citation form applies to all briefs filed under this rule.

(b) Requirements for Non-Movant. No later than 30 days after service of the motion, a party opposing the motion shall serve and file a supporting brief and any evidence not already in the record upon which the party relies. The brief shall include a section labeled “Statement of Material Facts in Dispute” which responds to the movant’s asserted material facts by identifying the potentially determinative facts and factual disputes which the nonmoving party contends demonstrate that there is a dispute of fact precluding summary judgment. These facts shall be supported by appropriate citations to discovery responses, depositions, affidavits, and other admissible evidence either already in the record or contained in an appendix to the brief.

(c) Reply Brief. A party filing a motion for summary judgment may file a reply brief no later than 15 days after service of the opposing party’s submissions.

(d) Surreply. If, in reply, the moving party relies upon evidence not previously cited or objects to the admissibility of the non-moving party’s evidence, the non-moving party may file a surreply brief limited to such new evidence and objections, no later than seven days after service of the reply brief.

(e) Effect of Factual Assertions. For purposes of deciding the motion for summary judgment, the Court will assume that the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy, except to the extent that such facts: are specifically controverted in the opposing party’s “Statement of Material Facts in Dispute” by admissible evidence; are shown not to be supported by admissible evidence; or, alone, or in conjunction with other admissible evidence, allow reasonable inferences to be drawn in the opposing party’s favor which preclude summary judgment. The Court will also assume for purposes of deciding the motion that any facts asserted by the opposing party are true to the extent they are supported

by admissible evidence. The parties may stipulate to the facts in the summary judgment process, and may state that their stipulations are entered only for the purpose of the motion for summary judgment and are not intended to be otherwise binding. The court has no independent duty to search and consider any part of the record not specifically cited in the manner described in sections (a) and (b) above.

(f) Collateral Motions. Collateral motions in the summary judgment process, such as motions to strike, are disfavored. Any dispute regarding the admissibility or effect of evidence should be addressed in the briefs.

(g) Oral Argument or Hearing. All motions for summary judgment will be considered as submitted for ruling without oral argument or hearing unless a request for such is granted under Local Rule 7.5 or the Court otherwise directs.

(h) Notice to Pro Se Litigants. If a party is proceeding pro se and an opposing party files a motion for summary judgment, counsel for the moving party must submit a notice to the unrepresented opposing party that:

(1) briefly and plainly states that a fact stated in the moving party's Statement of Material Facts and supported by admissible evidence will be accepted by the Court as true unless the opposing party cites specific admissible evidence contradicting that statement of material fact, and

(2) sets forth the full text of Fed. R. Civ. P. 56 and S.D. Ind. L.R. 56.1; and

(3) otherwise complies with applicable case law regarding required notice to pro se litigants opposing summary judgment motions.

(i) Compliance. The Court may, in the interests of justice or for good cause, excuse failure to comply strictly with the terms of this rule.